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September 2, 2021

VIA ECFHonorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*, No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address several of the important issues raised in this litigation through mediation.

I. Background

I have continued to receive call and videoconference data from the parties. I continue to be in communication with the Federal Defenders, Inc. ("Plaintiff") and their

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counsel, and the government and representatives of the Metropolitan Detention Center (“MDC”) and Metropolitan Correctional Center (“MCC”).¹

My communications with the Federal Defenders and the government focused on the following topics:

1. The current status of in-person legal visitation at both institutions.
2. The execution of the current protocol for scheduling and placing attorney-client phone calls at the MDC and the MCC.

II. Telephonic Contact

The parties continue to schedule and facilitate legal phone calls under the Court Protocol for Attorney Calls and Teleconference Hearings. Pursuant to the Protocol, attorney-client calls were scheduled by Federal Defenders for afternoon slots of one-half hour each from 12pm to 3pm at the MDC and 1 to 3:30 pm at the MCC. As Your Honor is aware, the parties have also made efforts to expand legal call hours beyond the times provided in the Protocol. *See* ECF Nos. 70 & 76.

A. MCC

According to the information received from the Federal Defenders,² MCC scheduled 16 calls between August 26 and September 1. 11 calls were completed, two calls we are unaware of their outcome,³ and three calls were not completed for unknown reasons. We are working with the parties to gather more information about this call. Additionally, Federal Defenders report some technical and scheduling issues this week.

B. MDC

According to the information received from the parties, MDC scheduled 149 calls between August 26 and September 1.⁴ 119 calls were completed, two calls were not completed as the inmates refused to take their respective calls, 17 calls we are unaware of their outcome,⁵ and 11 calls were not completed for unknown reasons. We are working with the parties to gather more information about these calls. Federal Defenders report one call request pending for more than 48 hours. Additionally, Federal Defenders report some technical and scheduling issues this week.

¹ I held a call with the Warden of the MDC on August 31, 2021, and a joint mediation call with the parties on August 31, 2021.

² We did not receive data from the MCC for this week.

³ We did not receive data from the MCC for this week. These calls were reported by the Federal Defenders but their resolution is undetermined.

⁴ We did not receive data from the MDC for Friday, August 27, 2021; Monday, August 30, 2021; Tuesday, August 31, 2021; and Wednesday, September 1, 2021.

⁵ We did not receive data from the MDC for Friday, August 27, 2021; Monday, August 30, 2021; Tuesday, August 31, 2021; and Wednesday, September 1, 2021. These calls were reported by the Federal Defenders but their resolution is undetermined.

III. Videoconferencing

A. MCC

According to the information received from the Federal Defenders,⁶ MCC scheduled 12 videoconferences between August 26 and September 1. 9 VTCs were completed and three VTCs we are unaware of their outcome.⁷ We are working with the parties to gather more information about these VTCs. Additionally, Federal Defenders report some technical and scheduling issues this week.

B. MDC

According to the information received from the parties, MDC scheduled 29 videoconferences between August 26 and September 1.⁸ 23 VTCs were completed, five VTCs we are unaware of their outcome,⁹ and one VTC was not completed due to an unknown reason. We are working with the parties to gather more information about these VTCs. Federal Defenders report 29 VTC requests pending for more than 48 hours. Additionally, Federal Defenders report some technical and scheduling issues this week.

IV. MCC Closure

Last week the Department of Justice announced that the MCC would close for extensive repair work that would necessitate the transfer of the approximately 240 individuals currently housed there. As was discussed during last Friday's status conference, both the parties and the Court learned of this information the afternoon prior to the conference.

As part of the mediation process I have spoken with the Warden of the MDC regarding the potential transfer of individuals from the MCC to the MDC and issues of ensuring ongoing legal access. The Warden indicated that he had recently learned of the closure plans, and that no date had been provided for either the closure or the transfer of the inmates. We had discussions regarding several issues surrounding the impending transfers, including equipment and staffing. The Warden committed to ensuring that each unit, including the East SHU, received a dedicated videoconferencing unit to facilitate legal access and court appearances. While he did not have written guidance at the time of our call he also committed to providing me information once received.

⁶ We did not receive data from the MCC for this week.

⁷ We did not receive data from the MCC for this week. These VTCs was reported by the Federal Defenders but their resolution is undetermined.

⁸ We did not receive data from the MDC for Friday, August 27, 2021; Monday, August 30, 2021; Tuesday, August 31, 2021; and Wednesday, September 1, 2021.

⁹ We did not receive data from the MDC for Friday, August 27, 2021; Monday, August 30, 2021; Tuesday, August 31, 2021; and Wednesday, September 1, 2021. These VTCs were reported by the Federal Defenders but their resolution is undetermined.

This afternoon the government provided me with a draft document providing general information relating to the MCC closure, albeit with no timing for transfers or closures. I anticipate receiving more specific information as it is developed and will continue to engage with the Warden on the relevant issues.

Even in the absence of a specific timetable, the parties have begun to focus on issues of access raised by the impending transfer and closure. Federal Defenders have worked to proactively identify issues and discussions have begun. Both parties' status reports touch upon the initial issues under discussion and progress made. I will continue to engage with the parties on these and other issues as they arise.

Respectfully,

/s/ Loretta E. Lynch
Loretta E. Lynch

cc: Sean Hecker, Kaplan, Hecker & Fink
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